Remarks

An Office Action dated December 24, 2008 set a shortened period of response expiring on March 24, 2009. Filed concurrently herewith is a Request for Continued Examination (RCE) and a petition for a three-month extension of time extending the period of response up to and including June 24, 2009.

Claims 1-7 and 9-11 were pending in the application, with claims 1, 2 and 3 being independent claims. In brief review, the Examiner rejected claims 1-7 and 9-11 as allegedly being directed to non-statutory subject matter under 35 U.S.C. § 101; rejected claims 1-7 and 9-11 as allegedly obvious under 35 U.S.C. 103(a) over alleged "admitted prior art" (hereinafter "alleged admitted prior art") in view of CableScope's Media Math based on 2000 Nielsen Media Research (hereinafter "MediaMath"). The Examiner also cites U.S. Patent No. 7,039,931 to Whymark (hereinafter "Whymark").

By this Amendment, claims 1-2 have been amended. Claims 1-7 and 9-11 are pending in the application. Reconsideration of the pending claims and application is respectfully requested.

Response to Section 101 Rejection

The Examiner rejected claims 1-7 and 9-11 as allegedly being directed to non-statutory subject matter under Section 101. This rejection is respectfully traversed because claims 1-7 and 9-11 are believed to recite sufficient "transformation" to meet the requirements of Section 101 and the In re Bilski decision.

In the Bilski decision, the Court stated that "a claimed process is patent-eligible if it transforms an article into a different state or thing" and further that transformation of "specific data" that represents physical, tangible objects can be patent-eligible subject matter. In re

Bilski, 545 F.3d 943, 962-963 (Fed. Cir. 2008). The Court noted that the "raw materials of many information-age processes . . are electronic signals and electronically-manipulated data." Id. at 962. It is not required that the underlying physical object that the data represents be transformed. Id. at 963. Moreover, it is "irrelevant that any individual step or limitation of such processes by itself would be unpatentable under § 101." Id. at 958.

In light of this legal standard, claims 1-7 and 9-11 are believed to comply with Section 101. Independent claim 1 recites "national equivalent units using a database" (preamble), and such data is "related to local delivery of a television commercial spot" which is a tangible object. Claim 1 recites in part "determining a household universe for the data comprising the total number of households that subscribe to the network and storing the household universe in the database." Claim 1 also recites in part "retrieving a specific household universe for at least that part of the network corresponding to the location in which a spot was broadcast from the database and storing the specific household universe in a record corresponding to a specific local spot in the database for later retrieval." Claim 1 also recites "calculating household delivery for a specific spot by multiplying the network household delivery and the universe conformance factor and storing the household delivery data in the database." Claim 1 also recites "calculating the spot's demo delivery by multiplying the network demo delivery by the universe conformance factor and storing the demo delivery number in the database." Claim 1 also recites "aggregating the local spots and their corresponding household delivery, demo delivery data to obtain national equivalent units." Hence, for at least these reasons, claim 1 recites a process that transforms specific data using a database into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

Independent claim 2 relates to the transformation of data representing local spots into "national equivalent units." Claim 2 recites in part "obtaining national viewing data for the

network in increments of less than one hour corresponding to each time the local spot aired and uploading said data into said database." Claim 2 also recites "sorting the database by one or more of advertiser, length of spot, network, daypart, and ISCI Code." Claim 2 also recites "aggregating the audience values to create a national equivalent unit on the network." For at least these reasons, claim 2 recites a process that transforms specific data into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

Independent claim 3 and dependent claims 4-7 and 9-11 relate to transforming data representing local commercial spot inventory into "national equivalent units." Claim 3 recites "determining an impression delivery for the local spots aired based on viewing data in increments of less than one hour from a national audience measurement and matching the impression delivery data with the information from the processed affidavits as a record in a database." Claim 3 also recites "comparing an estimated delivery derived from data in the database with the actual delivery to determine the value of the national equivalent unit." For at least these reasons, claims 3-7 and 9-11 recite a process that transforms specific data into national equivalent units, and this data represents tangible objects in compliance with Section 101 and the Bilski decision.

Accordingly, it is respectfully requested that this rejection be withdrawn.

Response to Section 103 Rejection

The Examiner rejected claims 1-7 and 9-11 as allegedly obvious under 35 U.S.C. 103(a) over "alleged admitted prior art" in view of "MediaMath". The Examiner also cites the Whymark patent in the obviousness rejection. These rejections are respectfully traversed.

First, the MediaMath reference (which references Nielsen Media Research) is not understood to disclose the formation of "national equivalent units" related to local commercial advertising spots. While the MediaMath reference has a number of different calculations, none are understood to relate to "national equivalent units" or local commercial advertising spots as recited in independent claims 1, 2 and 3.

Second, as to the alleged admitted prior art, the Applicant respectfully re-iterates its traversal of the Examiner's characterization of the statements made in paragraphs [0025] and [0028] of the "Detailed Description of the Invention" as "admitted prior art." While these paragraphs acknowledge the *availability* of electronic affidavits and Nielsen's CMIT database, it is respectfully pointed out that the manner in which embodiments of the invention use these electronic affidavits and CMIT databases – in combination with the other operations recited in the independent claims – is novel and unique.

Third, as to the Whymark patent cited by the Examiner, this patent does not relate to forming "national equivalent units" but instead is understood to relate to confirming that an advertisement did in fact run on a station during a scheduled time period – known as "fulfillment of advertising orders." Whymark states:

> Therefore, what is desired is broadcast advertisement tracking, managing and reporting method and system that provide accurate, independent confirmations of the fulfillment of broadcast advertising orders, that provide significant advantages in matching multi-market broadcasts of advertisements to multi-market advertising orders, that provide significant advantages in reporting of fulfilled and unfulfilled orders and that provide such matching, confirmation and reporting for a large number of broadcasts over a large number of broadcast markets. (Col. 3, lines 16-25).

Whymark is understood to encode broadcast items with "unique detection codes", and then

> "the detection devices detect instances of actual broadcasts of encoded broadcast items, such as encoded advertisements, and record information regarding each detected actual broadcast in a log. Any suitable method for encoding or assigning unique codes to broadcast items may be employed with the present invention; however, preferably the method is able to detect the date, time, channel and duration of the broadcast item, in addition to the code." (Col. 3, lines 38-45; see also Col. 9, "Step 3 – Encode Advertisements").

While the Examiner cites Whymark as alleged "confirmation of the motivation in the market place for ever more accurate accounting of not only aired but actually viewed programs" (page 4 of Office Action), the sections of Whymark cited by the Examiner (col. 2, lines 37-63; and col. 23, lines 33-42) are not understood to relate specifically to forming "national equivalent units" in the manner recited in claims 1, 2, and 3, and hence are not believed to be relevant to the patentability of the present claims. The mere fact Whymark is electronically detecting whether an advertisement actually ran in a scheduled time slot cannot reasonably be used to render unpatentable all inventions related to advertisement spots – particularly where independent claims 1, 2 and 3 recite specific operations not disclosed in Whymark, MediaMath or the alleged admitted prior art.

Specifically with respect to the claims, claim 1 recites in part "a method of calculating performance related to local delivery of a television commercial spot by aggregating local spots broadcast on a network into national equivalent units." The Examiner contends that the alleged admitted prior art discloses this, citing paragraphs [0009] – [0011] of the present application and "what is notoriously well known in the art such as Nielsen." This is respectfully traversed,

because claim 1 relates to "local delivery of a commercial spot by aggregating local spots" wherein the prior technique discussed in paragraphs [0009] – [0011] and Nielsen is understood to provide total national viewership without local zone allocation.

Further, claim 1 recites in part "retrieving a specific household universe for at least that part of the network corresponding to the location in which a spot was broadcast from the database and storing the specific household universe in a record corresponding to a specific local spot in the database for later retrieval." The Examiner contends that a local spot population is a subset of global House Hold Population. This is respectfully traversed, because not all zones insert in all networks, and therefore, the local spot population is not typically a subset of global House Hold Population as asserted by the Examiner. For at least this reason, claim 1 is believed to be allowable.

Further, while the Examiner asserts that it would be allegedly obvious "to automate the scoring and iterating steps" (Office Action, page 10), this is respectfully traversed. Prior to the present invention, it is believed that there was no manual or automated system to map or link zone penetration against net universe and to apportion against Nielsen national ratings. Hence, for at least this reason, claim 1 is believed to be allowable.

Regarding independent claim 2, this claim recites in part "obtaining national viewing data for the network in increments of less than one hour corresponding to each time the local spot aired and uploading said data into said database." The Examiner alleges that Nielsen's CMIT discloses this operation. This is respectfully traversed. CMIT is understood to only track clearings by time zone to measure aggregated delivery of syndicated programming, and CMIT does not track zone insertion. Moreover, claim 2 also recites "determining household impression and demo impression for the local spots based on the national viewing data" and as pointed out in paragraphs [0011]-[0012] of the Application, the prior art has used "daypart"

averages which are a broadly defined period of time such as "prime-time" – and not national viewing data "in increments of less than one hour" as recited in claim 2. For at least these reasons, claim 2 is believed to be allowable.

Regarding independent claim 3, this claim recites in part "determining an impression delivery for the local spots aired based on viewing data in increments of less than one hour from a national audience measurement and matching the impression delivery data with the information from the processed affidavits as a record in a database." The Examiner states that Nielsen's CMIT database contains data on a quarter hour basis and that this operation is allegedly "notoriously well known." As discussed above and in paragraphs [0011]-[0012] of the Application, the prior art has used "daypart" averages which are a broadly defined period of time such as "prime-time" – and not national viewing data "in increments of less than one hour" as recited in claim 3.

For at least these reasons, claim 3 is believed to be allowable, as well as dependent claims 4-7 and 9-11 which depend from independent claim 3.

Conclusion

The application and claims are believed to be in condition for allowance. No additional fees are due beyond the RCE fee and extension fee submitted herewith. Should the Examiner have any questions, please contact the undersigned attorney at 303-223-1195.

Respectfully submitted,

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